Thesis Painting, Inc. and International Union of Painters and Allied Trades, AFL-CIO, District Council 51. Case 05–CA–167137

October 13, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

On January 31, 2017, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief, and the Respondent filed a reply. The General Counsel also filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions. In sum, the Board certified the International Union of Painters and Allied Trades, AFL–CIO, District Council 51 (Union) on November 2, 2015, as the exclusive collective-bargaining representative of the unit employees. Although the Respondent contested the certification, the United States Court of Appeals for the Fourth Circuit, in an unpublished order, enforced the Board's Order requiring the Respondent to recognize and bargain with the Union. *Thesis Painting, Inc. v. NLRB*, 684 Fed. Appx. 321 (4th Cir. 2017) (per curiam). In this case, we consider layoffs of unit employees that the Respondent undertook in December 2015 and January 2016 without bargaining with the Union. Layoffs are a mandatory subject of bargaining under Section 8(d) and 8(a)(5) of the Act, and the Respondent was obliged to give the Union notice and an opportunity to bargain before implementing the layoffs. Further, as did the judge, we find that the Respondent did not carry its burden of establishing that an "economic exigency" or any other related factors excused its admitted failure to bargain over the layoffs.[2] Given that finding, we adopt the judge's recommended Order as modified and set forth in full below.[3]

[1] The Respondent has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's finding that the Respondent did not establish an "economic exigency" that would have excused its failure to bargain over the disputed layoffs, we do not pass on whether such a defense is available to an employer that is testing the validity of a union certification by refusing to bargain. We consider such a defense here in the absence of exceptions to its application. Member McFerran believes that, to the extent that such a defense is available to the Respondent, it has the burden of proving that it is excused from bargaining altogether, which is a heavier burden than proving economic exigency for expedited bargaining. See *RBE Electronics of S.D.*, 320 NLRB 80, 81–82 (1995).

Further, we do not rely on the judge's discussion, in footnote 3 of his decision, regarding *Bottom Line Enterprises*, 302 NLRB 373 (1991), enfd. 15 F.3d 1087 (9th Cir. 1994), and *RBE Electronics of S.D.,* above. Moreover, while Chairman Miscimarra recognizes that *Bottom Line Enterprises* and *RBE Electronics* are extant precedent, he expresses no view on the soundness of those decisions. We also do not rely on *Latino Express, Inc.*, 359 NLRB 518 (2012), a decision that issued at a time when the Board included two persons whose appointments to the Board the Supreme Court subsequently held were not valid. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). Instead, we rely on *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

We also do not rely on the judge's statement that the Respondent "was certainly faced with an economic emergency requiring prompt action." Member Pearce, in finding that there was not an economic exigency justifying unilateral layoffs, notes that the layoffs were staggered over several weeks in December 2015 and January 2016, and they did not begin until 5 days after the Respondent learned of a contract cancellation. See *Becker Group, Inc.*, 329 NLRB 103, 111 (1999) (employer could have negotiated with the union during its week-long deliberation over whether to lay off employees). Likewise, Member Pearce would find that there were no reasonably unforeseeable events requiring immediate layoffs given that the Respondent's financial condition had been deteriorating for months, that its workload had often fluctuated, and that it had known, for some time, of a possible contract postponement. See *Ardit Co.*, 364 NLRB No. 130, slip op. at 5 (2016) (loss of a major contract and unsuccessful bid for another contract "do not rise to the level of a dire financial emergency that would completely suspend the duty to bargain"); *Farina Corp.*, 310 NLRB 318, 321 (1993) (loss of a customer account "does not constitute a compelling economic consideration justifying a failure to bargain"). Additionally, Member Pearce notes that there is no evidence that bargaining over the Respondent's need for cost savings, which is well-suited for collective bargaining, would have been futile. See *Lapeer Foundry & Machine, Inc.*, 289 NLRB 952, 954 (1988) (layoff decisions are amenable to resolution through the collective-bargaining process).

Finally, we reject the Respondent's argument that the layoffs were consistent with past practice and thus not an unlawful unilateral change. The Respondent did not raise this argument, in any form, before the judge. Consequently, it has been waived. See, e.g., *Strategic Resources, Inc.*, 364 NLRB No. 42, slip op. at 1 fn. 2 (2016); *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989), enfd. 922 F.2d 832 (3d Cir. 1990). Member Pearce would further find that, even if the Respondent had timely raised and showed that a past practice existed, the Respondent nevertheless had an obligation to bargain over the economic layoffs. See *Adair Standish Corp.*, 292 NLRB 890, 890 fn. 1 (1989) ("The [r]espondent argues that because of its past practice of instituting economic layoffs due to lack of work, it had no obligation to bargain with

ORDER

The National Labor Relations Board orders that the Respondent, Thesis Painting, Inc., Springfield, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off unit employees without first notifying the Union and giving it an opportunity to bargain.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Compensate Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(d) Compensate Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs, and within 3 days thereafter, notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Springfield, Virginia facility copies of the attached notice marked "Appendix"[4] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 8, 2015.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

the [u]nion over such layoffs. However, because of the intervention of the bargaining representative, the [r]espondent could no longer continue unilaterally to exercise its discretion with respect to layoffs."), enfd. in relevant part 912 F.2d 854 (6th Cir. 1990).

[3] In accordance with our decision in *AdvoServ of New Jersey, Inc.*, above, we shall amend the judge's recommended tax compensation and Social Security reporting remedy. We shall modify the judge's recommended Order to reflect this remedial change and to conform to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. October 13, 2017

Philip A. Miscimarra,	Chairman
Mark Gaston Pearce,	Member
Lauren McFerran,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT lay off any of our unit employees without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz whole for any loss of earnings and other benefits resulting from their layoffs, less any net interim earnings, plus interest, and WE WILL also make these employees whole for their reasonable search-for-work and interim employment expenses, plus interest, regardless of whether those expenses exceed their interim earnings.

WE WILL compensate Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoffs, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the layoffs will not be used against them in any way.

THESIS PAINTING, INC.

The Board's decision can be found at www.nlrb.gov/case/05-CA-167137 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Clark C. Brinker, Esq., for the General Counsel.
Maurice Baskin (Littler Mendelson, P.C.), of Washington, D.C., for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Washington, D.C. on November 10, 2016. The Painters and Allied Trades Union, District Council 51 filed the charge on January 5, 2016. The General Counsel issued the complaint on March 31, 2016.

The Regional Director of Region 5 certified the Union as the exclusive bargaining representative of Respondent's full-time and regular part-time painters and lead painters on November 2, 2015.[1] The Union demanded bargaining 3 days later. The Board denied Respondent's Request for Review of the certification on March 24, 2016. Respondent then appealed the Board's decision to the United States Court of Appeals for the Fourth Circuit.

On December 8, 2015, Respondent laid off 5 painters. It laid off another painter on December 11, 3 more painters on December 28 and 1 more on January 18. Respondent did not notify the Union about the layoffs either before or after they occurred. Respondent did not offer to bargain about the decision to lay off or the effects of the layoff. Moreover, Respondent has not recognized the Union nor offered to bargain with the Union about anything.

While Respondent declined to bargain with the Union primarily because it denied the legitimacy of its certification, this case presents an additional argument, "compelling economic circumstances." Respondent contends that an economic emergency justified its failure to notify the Union and offer it an opportunity to bargain over the lay-off decision or the effects of that decision.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. JURISDICTION

Respondent, a corporation, is a painting contractor based in Springfield, Virginia. In the 12 months prior to February 29, 2016, Respondent performed services valued in excess of $50,000 outside the State of Virginia. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent's worsening financial situation in 2015

Respondent has been in business since 1995. It is a painting and wall covering contractor in the Washington, D.C. metropolitan area. Respondent operated at a loss for 8 of the 12 months of calendar year 2015, including 5 of the last 6 months of the year. Measured in terms of the number of hours Respondent's employees were working, 2015 was a much worse year than 2014 (GC Exh. 13). For example, in the last week of July 2014, Respondent's employees worked 2353 hours; in the last week of July 2015, they worked 1140 hours. The number of hours worked by Respondent's employees in the week ending September 11, 2015, was 662, a drop of 478 hours since the last week of July 2015. In the comparable week in 2014, company employees worked 1844 hours. Thus, Respondent's financial position was very poor months before the events in December 2015 on which it relies in claiming "compelling economic circumstances" that justifies avoiding notifying and bargaining with the Union about the December layoffs.

Prior to December 2015, employees called an automatic system each day to find out whether they were working the next day, and if so where they were working. When the hours available to employees dropped, they simply received no work assignments for the next day. Thus, in late August-September 2015, employee Alba Moran received work assignments only once or twice a week.

The events of December 2015

In December 2015, Respondent's largest project was the Park Potomac Apartments project, a $995,000 contract. The work on this project was slated to be completed by December 17, 2015. Respondent had two new projects slated to begin the same month.

On December 3, 2015, Hensel Phelps, the general contractor on one of these projects, at Fort Mead, Maryland, cancelled its $706,000 contract with Respondent. Barbara Spyridakis, Respondent's chief executive officer, immediately called Henry Lloyd, a consultant, who had advised Thesis off and on since 2010. It is not clear exactly what advice Lloyd gave Spyridakis on December 3. She testified that he said that Respondent would have to cut expenses further than it had done already (Tr. 105), or "cut people." Lloyd's testimony is even less clear as to when he advised her that she must lay-off employees (Tr. 136–40). Lloyd and Spyridakis had telephone conversations after December 3 and he met with her face to face on December 14.

Respondent also had a contract to paint sprinkler pipes on the "Latitude Project." On December 4, Respondent learned that start date for this project was being pushed back from December 14 to March 7, 2016.

Respondent laid off 5 employees, all of whom had been working at the Park Potomac job on December 8. On December 14, it laid off 1 more of those employees, 3 more on December 28 and an additional employee on January 18.[2] The principal, if not only reason, Respondent did not notify the Union about the layoffs was that it was contesting the Union's certification (Tr. 114–115).

Analysis

Until such time as the Court of Appeals rules otherwise, the Board's certification of the Union is valid. Although an employer may properly decide that an economic layoff is required, once such a decision is made the employer normally must notify a union representing the unit of the effected employees, and upon request bargain with it concerning the layoffs, including the manner in which the layoffs and any recalls are to be effected. When an employer is faced with dire economic circumstances, a union must request negotiations in a timely and speedy fashion. Otherwise, the employer will have satisfied its

[1] The Union won a representation election conducted on July 31, 2015.

[2] The General Counsel moved to amend the complaint to include Emiliano Diaz because his name appeared on a subpoenaed list of employees laid off. Respondent in its brief asserts Diaz was not laid off. I rejected this contention. Respondent's claim that Freddy Robles quit and thus should not be on the list is supported by sworn testimony, Tr. 96. Its assertion about Diaz is not. Thus, I conclude that Diaz was laid off as indicated by GC Exh. 14.

bargaining obligation. Moreover, the negotiations must occur in a timely and speedy fashion, *Lapeer Foundry & Machine,* 289 NLRB 952, 953–954 (1988).

An employer that fails to notify its employees' bargaining representative of a layoff, while challenging to the union's certification, acts at its peril, *Clement Wire,* 257 NLRB 1058 (1981). If the certification is upheld, the employer will be found to have violated Section 8(a)(5) and (1).

Notification and an offer to bargain over lay-offs may be excused in extraordinary circumstances. *Angelica Healthcare Services Group,* 284 NLRB 844, 852–853 (1987). In the absence of precedent to the contrary, I will assume the defense of "economic exigency" is available to an employer who has no intention to notify and bargain with the Union under any circumstances.[3]

Respondent herein was certainly faced with an economic emergency requiring prompt action, i.e., the sudden loss and postponement of the work expected in December 2015. However, this begs the question as to whether it was necessary for it to implement layoffs without at least notifying the Union and offering the Union an opportunity to bargain over the layoffs and the effects of the layoff, such as the recall rights of the laid off employees.

Even assuming that prompt action was required, Respondent has not established that it was necessary to implement layoffs. Instead, it could have continued its past practice at least until it had given the Union an opportunity to bargain. That practice was to have employees call in and discover that there was no work for them on a daily basis. Secondly, since Respondent had sufficient time to notify and consult with Henry Lloyd before implementing the lay-offs, it certainly had time to notify the Union and discuss the layoff and its effects. As stated above, it is unclear when Lloyd advised Respondent that it must resort to layoffs and the number of layoffs he advised. Even assuming that the company did not have sufficient time to notify the Union about the layoffs on December 8 and 11, it certainly had sufficient time to notify the Union prior to the December 28 and January 18 layoffs.

Moreover, even if one were to excuse Respondent for not notifying and offering the Union an opportunity to bargain over the layoffs, it certainly violated the Act in not offering the Union an opportunity to bargain over the effects of the layoffs, such as recall rights.[4] In this regard, the record indicates that Respondent's economic fortunes have improved since December 2015. For example, the Latitude project appears to have commenced as rescheduled in March 2016 (Tr. 104). There is no evidence that any of the laid-off employees were recalled to work on that project.

CONCLUSION OF LAW

Respondent, Thesis Painting, Inc. violated Section 8(a)(5) and (1) by failing to notify the Charging Party Union in advance of the layoffs of December 8, 11, 28, 2015, and January 18, 2016. Respondent violated the Act in failing to give the Union the opportunity to bargain over these layoffs and the effects of these layoffs.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully laid-off Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010).

Respondent must also compensate these employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons,* supra, compounded daily as prescribed in *Kentucky River Medical Center,* supra.

Respondent shall file a report with the Social Security Administration allocating backpay for these employees to the appropriate calendar quarters. Respondent shall also compensate the discriminatees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Latino Express, Inc.,* 359 NLRB 518 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Springfield, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off unit employees without first notifying the Union and giving it an opportunity to bargain.

(b) In any like or related manner interfering with, restrain-

[3] *Bottom Line Enterprises,* 302 NLRB 373 (1991), and *RBE Electronics of S.D.,* 320 NLRB 80, 81 (1995), pertain to situations in which an employer in the course of collective-bargaining negotiations, is confronted with an "economic exigency." In such situations, the employer may not be required to wait until an impasse is reached before implementing a layoff. However, in most cases, the employer would still be required to provide advance notice of the layoffs to the union and the opportunity for speedy negotiations. These cases have little or no applicability to the instant case.

[4] Respondent appears to suggest that the Union waived its bargaining rights at p. 6 of its brief. I reject such a suggestion. The company had made it clear long before December that it would not bargain with the Union about anything. Thus, it would have been a futile gesture for the Union to have specifically requested bargaining over the layoff or its effects.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ing, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer full reinstatement to Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges.

(b) Make Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, ASlba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs in the manner set forth in the remedy section of this decision.

(c) Compensate these employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(d) File a report with the Social Security Administration allocating backpay for these employees to the appropriate calendar quarters.

(e) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum back awards, and file with the Regional Director for Region 5, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each employee.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Springfield, Virginia facility copies of the attached notice marked "Appendix" in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 5 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 8, 2015.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., January 31, 2017

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT lay you off without giving your collective bargaining representative, International Union of Painters and Allied Trades, AFL–CIO, District Council 51, advance notification and an opportunity to bargain over the lay-off and its effects.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer full reinstatement to Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Salvador Humberto Rodriguez, Jose Lorenzo Osorio, Orivel Betancourth, Alba Moran, Rubio Omar Diaz, Jose Inmar Viera, Jose Vicente Cantor, Francisco Otoniel Pacheco Martel, David Galindo, and Emiliano Diaz whole for any loss of earnings less any net interim earnings and search-for-work and interim employment expenses (regardless of interim earnings) and other benefits resulting from their layoffs, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating these employees' backpay to the appropriate calendar quarters.

WE WILL compensate these employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

THESIS PAINTING, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/05-CA-167137 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.